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E-filing

FILED
JUL 16 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
HS

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 MONICA COURTMAN,

} CASE NO.: **CV 12 3724**

12 Plaintiff,

} **NOTICE OF REMOVAL**

13 vs.

14 MIDLAND CREDIT
15 MANAGEMENT, INC.,

JCS

16 Defendant.

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1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Midland Credit Management, Inc.
3 ("Defendant"), a Kansas corporation, hereby removes to this Court the state court
4 action described below.

5 1. On June 13, 2012, a complaint was filed against Defendant by plaintiff
6 Monica Courtman ("Plaintiff"), in an action pending in the Superior Court of the
7 State of California in and for the County of Sonoma, entitled *Monica Courtman v.*
8 *Midland Credit Management, Inc.*, Case No. 181517. A copy of the state court
9 small claims complaint ("Complaint") is attached hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
11 Defendant was first served with a copy of the Complaint on June 18, 2012.

12

13 **JURISDICTION**

14 3. This action is a civil action of which this Court has original
15 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by
16 Defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
17 asserts federal claims against Defendant allegedly arising under, *inter alia*, the
18 federal Fair Credit Reporting Act, 15 U.S.C. § 1681s-1, and the Fair Debt
19 Collection Practices Act, 15 U.S.C. §§ 1692e(8) and 1692k. *See* Exhibit A, at ¶ 3.

20 4. The Complaint was filed in the Superior Court of the State of
21 California, County of Sonoma. Venue in this District Court is proper. *See* 28
22 U.S.C. § 1441(a) (providing for removal "to the district court of the United States
23 for the district and division embracing the place" where the state court action is
24 pending); 28 U.S.C. § 84(b) (The Northern District comprises the counties of, *inter
alio*, Sonoma).

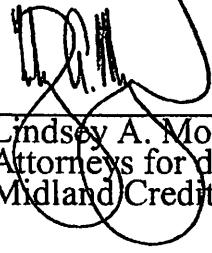
25 5. Defendant is represented by the undersigned.

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1 DATED: July 16, 2012
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SIMMONDS & NARITA LLP
TOMIO B. NARITA
LINDSEY A. MORGAN

By: 

Lindsey A. Morgan
Attorneys for defendant
Midland Credit Management, Inc.

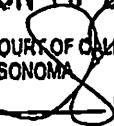
Exhibit A

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court**

Clerk stamps date here when form is filed.

FILED

JUN 13 2012

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMABY  DEPUTY CLERK

Fill in court name and street address:

Superior Court of California, County of

SONOMA COUNTY SUPERIOR COURT
CIVIL DIVISION
600 ADMINISTRATION DR RM 107-J
SANTA ROSA CA 95403

Clerk fills in case number and case name:

Case Number:

MS -

181517

Case Name:

Courtman v. Midland Credit

Notice to the person being sued:

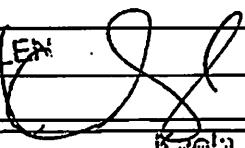
- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in ① and ② must go to court: (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	AUG - 9 2012	4:30pm	14	
2.				
JUN 13 2012				JOSE O. GUILLEN 
Date: _____				Clerk, by _____, Deputy _____

Katelyn Feltens

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Case Number: _____

Plaintiff (list names): _____

① The Plaintiff (the person, business, or public entity that is suing) is:

Name: Monica (Wurtman) Phone: (707) 696-6491
 Street address: 113 Washington Court City: Healdsburg State: CA Zip: 95448
 Mailing address (if different): Street City: _____ State: _____ Zip: _____

If more than one Plaintiff, list next Plaintiff here:

Name: _____ Phone: (_____) _____

Street address: Street City: _____ State: _____ Zip: _____

Mailing address (if different): Street City: _____ State: _____ Zip: _____

Check here if more than 2 Plaintiffs and attach Form SC-100A.

Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

② The Defendant (the person, business, or public entity being sued) is:

Name: Midland Credit Management, Inc Phone: 800 825-8131
 Street address: 8875 Aero Drive, Suite 200, San Diego CA 92123 State: _____ Zip: _____
 Mailing address (if different): Lawyers CSC - 2710 Gateway Oaks Suite 1500 City: _____ State: _____ Zip: _____
Sacramento CA 954833

If more than one Defendant, list next Defendant here:

Name: _____ Phone: (_____) _____

Street address: Street City: _____ State: _____ Zip: _____

Mailing address (if different): Street City: _____ State: _____ Zip: _____

Check here if more than 2 Defendants and attach Form SC-100A.

Check here if any Defendant is on active military duty, and write his or her name here: _____

③ The Plaintiff claims the Defendant owes \$ 1,000. (Explain below):

a. Why does the Defendant owe the Plaintiff money? Creditor Failed to report disputed debt and disputed to the credit bureaus. Section 807(8) 807(3)

b. When did this happen? (Date): _____

If no specific date, give the time period: Date started: 3/20/2012 Through: 6/5/2012

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) \$1,000 fine under FCRA section 623, Fair debt collection 813 - civil liability

Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Case Number: _____

Plaintiff (list names): _____

④ You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? Yes No

If no, explain why not: *5/25/2011 - Sent certified Mail w/ a letter requesting they pay me - Defendant replied by email but did not pay.*

⑤ Why are you filing your claim at this courthouse? _____

This courthouse covers the area (check the one that applies):

a. (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
 (2) Where the Plaintiff's property was damaged.
 (3) Where the Plaintiff was injured.

b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)

c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)

d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)

e. Other (specify): _____

⑥ List the zip code of the place checked in ⑤ above (if you know): 95448

⑦ Is your claim about an attorney-client fee dispute? Yes No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here:

⑧ Are you suing a public entity? Yes No

If yes, you must file a written claim with the entity first. A claim was filed on (date): _____

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

⑨ Have you filed more than 12 other small claims within the last 12 months in California?

Yes No If yes, the filing fee for this case will be higher.

⑩ I understand that by filing a claim in small claims court, I have no right to appeal this claim.

⑪ I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: JUN 13 2012 Monica Courtman

Plaintiff types or prints name here



Plaintiff signs here

Date: _____

Second Plaintiff types or prints name here

▶

Second Plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civil Code, § 54.8.)

“Small claims court” is a special court where claims for \$5,000 or less are decided. A “natural person” (not a business or public entity) may generally claim up to \$10,000, including a sole proprietor. (*See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don’t have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read “Be Prepared for Your Trial” at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don’t speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courts.ca.gov/smallclaims/forms.

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You’ll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge’s decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see:
www.courts.ca.gov/smallclaims/appeals.

***Exceptions:** Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc. § 116.221.)

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant’s Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff’s claim and pay the money.** Or, if you can’t pay the money now, go to your trial and say you want to make payments.
- **Let the case “default.”** If you don’t settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county’s Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

SC-100**Información para el demandado (la persona demandada)**

La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública) puede reclamar hasta \$10,000. Una "persona natural" (que no sea un negocio ni una entidad pública), que incluye un dueño único, generalmente puede reclamar hasta \$10,000. (* Vea abajo para las excepciones.) El proceso es rápido y barato. Las reglas son sencillas e informales.

Usted es el Demandado — la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero *no* puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos, y cualquier pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en:

www.courts.ca.gov/reclamosmenores/preparese.

¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accomodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo inglés bien?

Traiga a un adulto que no sea testigo para que le sirva de intérprete. O pida al secretario de la corte que le asigne uno. Si quiere que la corte le asigne un intérprete, lo tiene que pedir como mínimo menos cinco días antes de la fecha en que tenga que ir a la corte. Es posible que no haya disponible un intérprete proporcionado por la corte o que tenga que pagar una cuota por emplear un intérprete de la corte, a menos que tenga una exención de cuotas. Puede pedir a la corte una lista de intérpretes y la Solicitud de exención de cuotas y costos de la corte (formulario FW-001).

¿Dónde puedo obtener los formularios de la corte que necesito?

Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en: www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el Juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea: www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones?

Si. Si lo están demandando, puede:

- Resolver su caso antes del juicio. Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- Probar que es la corte equivocada. Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- Ir al juicio y tratar de ganar el caso. Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- Demandar a la persona que lo demandó. Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- Aceptar el reclamo del Demandante y pagar el dinero. O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- No ir al juicio y aceptar el fallo por falta de comparecencia. Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo?

Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio) o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (0 a 20 días si vive fuera del condado) o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O vea "Información por condado" en:
www.courts.ca.gov/reclamosmenores/asesores.

***Excepciones:** Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).) En un caso presentado por una persona natural por daños debido a lesiones físicas en un accidente automovilístico, existe un límite de \$7,500 si el demandado tiene cobertura bajo una póliza de seguro de vehículo que incluye la obligación de defender. (Vea el Código de Procedimiento Civil, sección 116.221.)

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

1) NOTICE OF REMOVAL

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressee indicated below:

VIA U.S. MAIL

Monica Courtman
113 Washington Court
Healdsburg, CA 95448
Plaintiff in pro per

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 16th day of July, 2012.

Sally Lh

Sally Koo